

² The Board notes that appellant submitted additional evidence to the Board after OWCP had rendered its November 6, 2015 decision. The Board's jurisdiction, however, is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, this additional evidence cannot be considered by the Board. 20 C.F.R. § 501.2(c)(1).

On appeal, appellant contends that the medical evidence he submitted from his physician is sufficient to establish causal relationship and demonstrates that his current medical condition is related to his accepted injury.

FACTUAL HISTORY

On June 8, 2015 appellant, a 35-year-old border patrol agent, filed a traumatic injury claim (Form CA-1) alleging that he sustained an injury on June 7, 2015 as a result of slipping and landing on his right foot while tracking a group of six subjects that were descending a ridge. He noted having symptoms in his right ankle, foot, and knee. Appellant did not stop work.

In an August 20, 2015 report, Dr. Michael R. Lenihan, a Board-certified orthopedic surgeon, asserted that appellant was seen for a right lower extremity injury sustained on June 7, 2015 and diagnosed right ankle strain/sprain with some posterior tibialis tendinitis and right knee strain/sprain with possible medial meniscal tear. Appellant reported that on June 7, 2015 at approximately 11:00 a.m. he was climbing down an approximately 20-foot cliff and was hanging over the side when he eventually lost his footing and fell approximately 10 feet through the air landing on rocks and dirt. He sustained a forceful axial blow to the right lower extremity along with some twisting of the knee and ankle. Dr. Lenihan noted that appellant had a previous right ankle injury in 2008, which had healed on its own, and a right knee injury in 2005. Upon examination of his foot and ankle, appellant had tenderness over the posterior tibialis tendon and plantar fascia. His Achilles was intact. Appellant had no tenderness over the calcaneus with palpation or percussion and no significant tenderness over the lateral ankle ligaments. Dr. Lenihan opined that appellant's right knee and ankle conditions arose out of and in the course of his usual and customary duties at work through a mechanism of direct trauma causing strain/sprain of the knee and possible internal derangement, as well as strain/sprain of the ankle. He released appellant to perform his regular duties at work using good judgment and ordinary care in the performance of those duties.

On September 3, 2015 Dr. Lenihan found that an August 27, 2015 magnetic resonance imaging (MRI) scan of the right knee demonstrated a benign nonossifying fibroma in the proximal medial tibia. In addition, there was partial tearing of the semimembranosus attachment on the tibia and a small knee joint effusion. There was no complete tearing, no retraction, and the menisci and ligaments were intact. Dr. Lenihan concluded, therefore, that appellant sustained a strain (partial tearing of the tendon) of his right knee at the semimembranosus muscle. He opined that appellant was capable of regular duty without restrictions.

In a September 29, 2015 letter, OWCP advised appellant of the deficiencies of his claim and afforded him 30 days to submit additional evidence and respond to its inquiries.

Subsequently, appellant submitted a narrative statement dated October 7, 2015 indicating that he was tracking and following a group of suspected undocumented subjects as he was coming down a ridge of a mountain when he fell and landed on his right foot. He stated that in 2008 he had an injury at work on the same ankle after landing on a rock, but that injury healed on its own within three weeks.

In an October 1, 2015 report, Dr. Lenihan asserted that appellant was having less pain and better motion and function with his right knee. Appellant continued to have some pain with more forceful activities or greater knee bending activities and some tenderness along the medial aspect of the knee. Dr. Lenihan opined that appellant was capable of continuing with his regular duties at work without restrictions. On October 29, 2015 he opined that appellant had not yet reached maximum medical improvement but released him to return to regular work without restrictions.

By decision dated November 6, 2015, OWCP accepted that the incident had occurred as alleged and that appellant had been diagnosed with a right knee strain/sprain. It denied his claim, however, because the medical evidence was insufficient to establish causal relationship between the diagnosed knee conditions and the June 7, 2015 employment incident. OWCP denied the claim for a right ankle condition because there was no evidence at the time of the incident to support a diagnosis relating to the right ankle.

On an appeal request form postmarked December 18, 2015, appellant requested a telephonic oral hearing before the Branch of Hearings and Review.

By decision dated February 3, 2016, OWCP denied the request for an oral hearing as it was not made within 30 days of its November 6, 2015 decision. It exercised its discretion and noted the matter could be equally addressed by requesting reconsideration and submitting evidence not previously considered by OWCP.

LEGAL PRECEDENT -- ISSUE 1

Section 8124(b)(1) of FECA provides: “Before review under section 8128(a) of this title [relating to reconsideration], a claimant for compensation not satisfied with a decision of the Secretary under subsection (a) of this section is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on [his] claim before a representative of the Secretary.”³

Section 10.615 of Title 20 of the Code of Federal Regulations provides, “A hearing is a review of an adverse decision by a hearing representative. Initially, the claimant can choose between two formats: An oral hearing or a review of the written record.”⁴ The hearing request must be sent within 30 days (as determined by postmark or other carrier’s date marking) of the date of the decision for which a hearing is sought.⁵ OWCP has discretion, however, to grant or deny a request that is made after this 30-day period.⁶ In such a case, it will determine whether to grant a discretionary hearing and, if not, will so advise the claimant with reasons.⁷

³ 5 U.S.C. § 8124(b)(1).

⁴ 20 C.F.R. § 10.615.

⁵ *Id.* at § 10.616.

⁶ *See G.W.*, Docket No. 10-782 (issued April 23, 2010).

⁷ *Id.*

ANALYSIS -- ISSUE 1

Appellant had 30-calendar days from OWCP's November 6, 2015 decision to request an oral hearing. He filed a request for an oral hearing postmarked December 18, 2015, which was more than 30 days after OWCP issued its November 6, 2015 decision.⁸ Section 8124(b)(1) is unequivocal on the time limitation for requesting a hearing.⁹ For this reason, the Board finds that the request was untimely. Because the application was not timely filed, appellant was not entitled to an oral hearing as a matter of right under section 8124(b)(1) of FECA.

Exercising its discretion to grant an oral hearing, OWCP denied appellant's request finding that he could equally well address any issues in his case by requesting reconsideration. Because reconsideration exists as an alternative appeal right to address the issues raised by OWCP's November 6, 2015 decision, the Board finds that OWCP did not abuse its discretion in denying appellant's untimely request for an oral hearing.¹⁰

LEGAL PRECEDENT -- ISSUE 2

An employee seeking benefits under FECA has the burden of establishing the essential elements of his claim, including the fact that the individual is an "employee of the United States" within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury¹¹ was sustained in the performance of duty, as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.¹²

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. A fact of injury determination is based on two elements. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury. An employee may establish that the employment incident occurred as alleged but fail to show that his condition relates to the employment incident.¹³

⁸ Under OWCP regulations and procedures, the timeliness of a request for a hearing is determined on the basis of the postmark of the envelope containing the request. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4(a) (October 2011).

⁹ See *William F. Osborne*, 46 ECAB 198 (1994).

¹⁰ See *Gerard F. Workinger*, 56 ECAB 259 (2005).

¹¹ OWCP regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

¹² See *T.H.*, 59 ECAB 388 (2008).

¹³ *Id.*

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.¹⁴

ANALYSIS -- ISSUE 2

OWCP has accepted that the employment incident of June 7, 2015 occurred at the time, place, and in the manner alleged. The issue is whether appellant's right ankle and knee conditions resulted from the June 7, 2015 employment incident.¹⁵ The Board finds that appellant did not meet his burden of proof to establish causal relationship between the conditions for which compensation is claimed and the employment incident.

In his reports, Dr. Lenihan diagnosed right ankle strain/sprain with some posterior tibialis tendonitis and right knee strain/sprain with possible medial meniscal tear. Appellant reported that on June 7, 2015 at approximately 11:00 a.m. he was climbing down an approximately 20-foot cliff and was hanging over the side when he eventually lost his footing and fell approximately 10 feet through the air landing on rocks and dirt. Dr. Lenihan asserted that appellant sustained a forceful axial blow to the right lower extremity along with some twisting of the knee and ankle. He reviewed an August 27, 2015 MRI scan of the right knee and concluded that appellant sustained a strain of his right knee at the semimembranosus muscle. Dr. Lenihan opined that appellant's right knee and ankle conditions arose out of and in the course of his usual and customary duties at work through a mechanism of direct trauma causing strain/sprain of the knee and possible internal derangement, as well as strain/sprain of the ankle. He opined that appellant was capable of regular duty without restrictions.

The Board finds that Dr. Lenihan failed to provide sufficient medical rationale explaining how slipping and falling on June 7, 2015 caused appellant's right ankle and knee conditions. Dr. Lenihan indicated that his conditions occurred at work, but such generalized statements do not establish causal relationship because they merely repeat appellant's allegations and are unsupported by adequate medical rationale explaining how his physical activity at work actually caused or aggravated the diagnosed conditions.¹⁶ The Board finds that Dr. Lenihan failed to explain how slipping and falling on rocks and dirt caused appellant's right ankle and knee conditions. Dr. Lenihan's opinion was based, in part, on temporal correlation. However, the Board has held that neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.¹⁷ Lacking

¹⁴ *Id.*

¹⁵ OWCP had denied appellant's claim for an ankle condition as no diagnosis had been provided for the right ankle. The Board finds that Dr. Lenihan clearly diagnosed both a right knee and a right ankle strain/sprain.

¹⁶ See *K.W.*, Docket No. 10-98 (issued September 10, 2010).

¹⁷ See *E.J.*, Docket No. 09-1481 (issued February 19, 2010).

thorough medical rationale on the issue of causal relationship, Dr. Lenihan's reports are of limited probative value and insufficient to establish that appellant sustained an employment-related injury causally related to the June 7, 2015 employment incident.

The Board further finds that Dr. Lenihan's reports are not based on an accurate history of appellant's right ankle and knee conditions. Dr. Lenihan noted that appellant had a previous right knee injury in 2005 and a right ankle injury in 2008. He indicated that he had similar symptoms in the previous claim as he does in the current claimed conditions. However, Dr. Lenihan did not provide a narrative setting forth a full and accurate history of appellant's right ankle and knee conditions and failed to provide an opinion adequately addressing how appellant's history of right knee and ankle issues, particularly the incidents in 2005 and 2008, would have caused or contributed to appellant's claimed conditions. The Board has held that medical opinions based on an inaccurate history have diminished probative value.¹⁸ The Board finds that Dr. Lenihan did not provide sufficient medical rationale explaining how appellant's new or preexisting right ankle and knee conditions were caused or aggravated by slipping and falling on June 7, 2015. The need for rationale is particularly important as the evidence indicates that appellant had a preexisting condition. Therefore, the Board finds that the reports from Dr. Lenihan are insufficient to establish causal relationship.

On appeal, appellant contends that the medical evidence he submitted from his doctor is sufficient to establish causal relationship and demonstrates that his current medical condition is related to his accepted injury. However, the Board has found that the medical evidence of record was insufficient to support his allegation that his right ankle and knee conditions were causally related to the June 7, 2015 employment incident. As noted above,¹⁹ the Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for an oral hearing as untimely. The Board further finds that appellant has not met his burden of proof to establish that his right ankle and knee conditions are causally related to a June 7, 2015 employment incident

¹⁸ See *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value). See also *Douglas M. McQuaid*, 52 ECAB 382 (2001); *N.H.*, Docket No. 13-849 (issued July 17, 2013).

¹⁹ See *supra* note 2.

ORDER

IT IS HEREBY ORDERED THAT the February 3, 2016 and November 6, 2015 decisions of the Office of Workers' Compensation Programs are affirmed, as modified.

Issued: July 13, 2016
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board